

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>ROBERTA A. BONICA,</b>	)	<b>CASE NO. 1:13 CV 957</b>
	)	
Plaintiff,	)	<b>JUDGE DAN AARON POLSTER</b>
	)	
vs.	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
<b>COMMISSIONER OF SOCIAL</b>	)	
<b>SECURITY ADMIN.,</b>	)	
	)	
Defendant.	)	

This case is before the Court on the Report and Recommendation of Magistrate Judge Kathleen B. Burke. (**Doc #:** 17 (“R&R”).) Magistrate Burke recommends that the Court affirm the final decision of the Defendant Commissioner of Social Security (“Commissioner”) denying Plaintiff Roberta A. Bonica’s application for Supplemental Security Income (“SSI”). (*Id.*)

In arriving at this conclusion, Magistrate Burke first noted that Plaintiff waived her right to counsel. (R&R at 1.) She then detailed Bonica’s prior, unsuccessful applications for SSI and Disability Insurance Benefits. (*Id.* at 2-3.) Magistrate Burke summarized Bonica’s personal and vocational evidence; her pertinent medical history; the medical opinion evidence of Bonica’s treating physicians, consulting healthcare professionals, and the state agency healthcare professionals; Bonica’s testimony at the hearing; and the vocational expert’s testimony. (*Id.* 3-8.) Magistrate Burke correctly notes that, in her merits brief, Bonica did not identify a particular error in the ALJ’s decision, but asserted that her disabling conditions have not improved since her previous award of damages for a closed-end period in 1996 and 1997. As Bonica has

represented herself through these proceedings, Magistrate Burke liberally construed her merits brief as challenging whether substantial evidence supports the ALJ's decision that Bonica is not disabled. (R&R at 11.) At pages 12 through 16 of the R&R, the Magistrate Judge concisely articulates the reasons supporting her conclusion that the ALJ's disability determination is supported by substantial evidence.

Bonica has filed objections to the R&R. (Doc #: 18 ("Objections").) To begin, she complains that she "has been denied her Equal Rights to Justice because no attorney could be retained on her behalf" and her signed waiver of her right to counsel "was not by choice." (Id. at 1.) This assertion reiterates the complaint in her merits brief that "she has not been able to secure counsel" leaving her case "in the hands of an incompetent as to legal procedure." (Doc #: 15 at 1.) In response, the Commissioner notes that the record shows Bonica was notified of her statutory right to counsel seven times in these latest proceedings – including at her November 2011 and March 2012 administrative hearings at which times she indicated that she understood her right to representation but wished to proceed with the hearings without counsel, and signed a written waiver of that right. (See Doc #: 19, at 2-3.) Accordingly, this "objection" is overruled.

Bonica also argues, without explanation, that the opinions of her treating physicians should be given controlling weight. This is in response to Magistrate Judge Burke's finding that the ALJ set forth good reasons for discounting those opinions. (See R&R at 14 (stating that the opinions of Doctors Tyler and Zinni were inconsistent and unsupported, and their comments that Bonica was unemployable were conclusory and reserved solely for the Commissioner).) Bonica's conclusory assertion is also overruled.

Finally, Bonica claims, for the first time on appeal to the district court, that there is significant evidence missing such as records of Dr. Zinni's prescriptions, and of pain and physical therapy referred by Dr. Tyler. The Court may not consider evidence presented for the first time to the district court in deciding whether to uphold, modify, or reverse the ALJ's decision. *Perry ex rel. King v. Comm'r of Soc. Sec.*, No. , 2013 WL 3328523, at 7 (E.D. Mich. Jul. 2, 2013) (citation omitted).

For these reasons, the Court hereby **ADOPTS** the R&R (**Doc #: 17**), **OVERRULES** the Objections (**Doc #: 18**), and **AFFIRMS** the final decision of the Commissioner denying Plaintiff Roberta A. Bonica's application for Supplemental Security Income.

**IT IS SO ORDERED.**

Dan A. Polster May 14, 2014

**Dan Aaron Polster  
United States District Judge**